COMMUNICATIONS

A SUGGESTION FOR THE PREVENTION OF STRIKES

By A. Maurice Low, Washington, D. C.

Is an employer justified in locking out his men? Is an employee justified in striking? To these questions there can be only one answer. In this enlightened age, in this age when the relations of the individual to society and of society to the individual are so interwoven that they cannot be dissociated, the resort to brute force is as much an anachronism as would be the resort to a trial by combat. Society can only justify a strike as it justifies a revolution. It is the last resource when all other means fail. It is the last resource when conditions are so intolerable that the only relief is the remedy of the sword. History has put the stamp of its approval on a few, a very few, revolutions.

I advance the following as the rough outline for the prevention of disputes between capital and labor.

Every employer of labor employing more than say ten employees must, before engaging in business, obtain from the state a license, the terms of which are: That he will not reduce the prevailing rate of wages or increase the hours of labor until after he has served notice of his intention upon his employees and a majority have accepted the change. In case a majority refuse to accept, the question is reported to the licensing authority, matters in the meantime remaining in *statu quo*. It shall be the duty of the licensing authority to ascertain all the facts touching the nature of the employment, the conduct of the business, its profits, the cost of living, and all other pertinent facts, and if the employer is sustained he may make the change as proposed. If the decision of the licensing authority is adverse no change may be made, nor may another proposition of the same character be made within a period of three months. A violation of this clause is punished by fine and imprisonment. An employer may at any time retire from business, but in that case, and to prevent his making the law a dead letter, he may not after retiring from business engage in the same business, either as principal or agent, within a period of six months.

An employee may not refuse to continue to work for an employer in whose employment he then is, and whose salary is regularly paid to him, and whose hours of labor and conditions of employment are not in contravention of any federal, state or municipal law, for any or all of the following reasons: Because an increase of pay is denied him, or because a reduction of hours is not granted to him, or because of the employment of some other person, or because of a regulation made by his employer. If an

employee desires to leave his employment because of any or all of the foregoing reasons he must serve notice upon his employer, and if the employer refuses to accept his demand he notifies the licensing authority, matters between them in the meantime remaining in *statu quo*. It is the duty of the licensing authority to investigate all the matters touching the dispute and to render his decision on just and equitable grounds, due regard being had by him as to the prevailing rates of wages and hours in employment of like character in the vicinity, the cost of living, the profits accruing to the manufacturer, the customs of the trade or craft and all other circumstances. If the decision is adverse to the men they shall remain at work under the conditions then prevailing and may not make another similar application for a period of three months. If at the end of that period they shall renew their application, which shall again be rejected, they may leave their employment without further liability. Failure to obey the decision of the licensing authority subjects the men to fine and punishment. If the application of the men is sustained by the licensing authority, either in whole or in part, he shall serve notice to that effect on the employer, who shall at once comply with the award. Failure on his part subjects him to fine and imprisonment.

The advantages which this system would have I shall suggest later. I prefer in the first place to meet the objections which I see will be raised.

It will be doubtless urged that it is proposed to abolish the right of freedom of contract, which is a thing held sacred by all liberty loving people. That is precisely what I do propose. I would abolish the so-called right which enables a man to oppress his employees, or an employer to be at the mercy of an undisciplined set of men, in the same way that society long years ago abolished the right that a man once possessed to kill the man whose gibe had offended him. For brutality and anarchy and oppression we substitute the simple and beautiful process of the law. It is of course a radical departure. Not more radical, however, than the law of Valerius which gave to the Roman plebeian the right to appeal from the magistrate to the people. Still less radical than the edict of Constantine abolishing crucifixion as a punishment. Whatever is new is always radical, while it is new.

It will perhaps be urged that the employee instead of being benefitted by the proposed law would in the last analysis find himself worse off than before, inasmuch as if he attempted to secure an advance of wages and the decision was adverse he would be compelled to labor at the prevailing rate for the next three months; and if the licensing authority was incompetent or corrupt the decision would always be against him. If his demand is unjust, if the employee asks for higher wages than the employer is justified in paying, it is perfectly proper that the demand should *not* be granted. Employers as well as employees must for their own protection be very sure that the licensing authority is neither corrupt nor inefficient. It lies in their own hands to secure the appointment of honest and competent servants. If they prefer to be badly served rather than well served, they must not complain if the results are unsatisfactory.

Admitting, for the sake of argument, that the method proposed is sound, it will be urged that it is impracticable because it would entail more work

than could be properly performed by one man, who would find it impossible to keep himself informed as to the prevailing rates of wages paid in all the industries in a state, or to be able to ascertain whether a demand for a change of wages was justified by the circumstances.

This objection is not so formidable, when carefully examined, as appears on its face. A properly constituted bureau would have a compilation of the wages and other conditions governing employment in every branch of labor, those compilations being revised from time to time as might be found necessary by improvements in machinery and any other circumstances affecting that particular industry. The bureau would also, and without much difficulty, be able to keep itself informed as to the cost of raw materials, the wholesale and retail prices of the finished product, the general state of the market and the cost of living. Such investigations are now periodically made by the United States Bureau of Labor and many of the Bureaus of Labor of the various states. As a matter of fact, the bureaus that would be created by the passage of a law such as I propose would be able quickly, scientifically, accurately and impartially, to arrive at all the facts affecting a labor dispute, facts which state boards of arbitration and conciliation as now constituted, arbitrators in general, newspapers and the public cannot reach because they have not the machinery with which to conduct their investigation, nor the opportunity to pursue an investigation which ramifies so extensively, and in which so many elements must be weighed with such exactness if a definite result is to be reached, and not a mere hasty generalization pronounced.

It will also be urged that the law would work great injustice to the small employer, as he might be forced to pay an increase of wages or else be driven out of business.

This would be an injury to the individual, but not to society. The man who because of his lack of capital, or his lack of ability, or his lack of thrift, who, in short, is unfitted to be an employer, has no right to degrade other men, and thereby degrade society, by making those men compensate for his deficiencies by a forced levy on their brains or their muscles. That is what an employer does whose only way to keep his head above water is to pay his men less than a prevailing wage, or by exacting of them a greater stint, or by making them work in dangerous or unsanitary surroundings. The world has no use for the inefficient, the incompetent, the unfit.

Doubtless it will be said that conceding the proposed law to be a solution for admitted evils it is merely a theoretical solution because incapable of being put into practical operation. It might be easy, it will be argued, to arrest a single employer or a handful of employees who chose to disregard the mandate of the proper authority, but what would happen in the case of a hundred thousand miners determined to strike; in the event that the employees of a great railroad system ignored the decision of the licensing authority?

The answer to that is what the answer of society has always been to every objection to a law: a law is valuable or worthless precisely as it is the concrete expression of a moral sense of the community. Any law, no matter how benign and beneficial, will fail of its purpose and fall into disrepute that

voices the sentiments of a faction merely and not the great majority of a community. Any law, no matter how harsh or injurious, will be observed if the majority believe that its observance is for the good of society as a whole. Law never precedes the evil that it is designed to cure, nor is law ever enacted in advance of that evil. First a thing is done, a thing that society regards as injurious. Then society proceeds to correct the evil by its prohibition, the disregard of which meets with punishment. In a word, all law in this enlightened age rests on the consent of the governed.

If the world twenty-five centuries after the writing of the twelve tables, "which next to the Christian religion is the most plentiful source of the rules governing actual conduct throughout Western Europe." in the words of Sir Henry Maine, is content to countenance the same rules of brute force and the same appeal to passion that governed the relations of men before there was even an attempt to form a rudimentary code and recognize the principles of law, nothing more can be said on the subject. The last word has been spoken.

No one need fear that the majority of the male inhabitants of a state will be placed in jail because they have elected to defy the law. No one need fear that additional jails will have to be built in every state. Men will obey the law because it represents public sentiment. A great rhetorician once said that you cannot indict a nation, and because there was a certain ring to the words they have been admiringly repeated by the unthinking, which is what the unthinking always do when words tickle their ears. Truth is, not only that you can indict a nation but more than once in the history of the world nations have been brought to plead at the great bar of public opinion. An entire community cannot be put in jail, nor will anyone attempt it, because there will be no necessity for it. One thing that distinguishes the Anglo-Saxon from any other race is its submission to the law. The law will be respected.

And, finally, we shall be told that the proposed law is unconstitutional, a word to terrify the timorous. Constitutionality, like patriotism, is frequently the refuge of the base and the cowardly. Entrenched behind the bulwark of constitutionality, designing men frighten the pusillanimous by declaring the constitution a thing too sacred to be touched, and by perverting the spirit of the constitution to their own selfish ends. If the suggestion herein made is unconstitutional then nearly every state in the Union has violated the constitution. If a law such as is proposed is unconstitutional, then the law of Massachusetts limiting the hours of labor in cotton mills is unconstitutional; then the law of Congress limiting the hours of labor on government work is unconstitutional, and examples can be multiplied a hundredfold. If it is unconstitutional to regulate conditions of labor, which is for the welfare of society, how much greater must be the unconstitutionality of the law which prohibits a man from working more than a certain number of hours a week, no matter how anxious he may be to exceed that limit. Clearly, in view of a long line of court decisions and the trend of modern society, the plea of unconstitutionality cannot be seriously entertained.

If a constitution stands in the way of progress, the constitution must be modified to suit the new conditions. Society does not exist for the benefit of constitutions. Constitutions are created for the benefit of society. A constitution, like any other law, will endure so long as it proves valuable and performs the functions for which it is provided. When it becomes obsolete or unsatisfactory because society has outgrown it—and society outgrows its laws exactly as a community outgrows its buildings and its transportation facilities—or it can be superseded by something better, that something better, in a progressive society, is found. No society, unless it has reached the limit of its intellectual, physical, material and moral development, is ever satisfied to regard any work of man as a finality. Progress is constant and continued evolution; constant and continued dissatisfaction with existing conditions because of a desire to better them; constant and continued change. Neither constitution, nor law, nor custom, nor convention is sacred. Whenever man makes of his works a fetich; whenever he creates an idol of the child of his brain; whenever out of his own conceit he sets up a graven image and proclaims it as a thing sacrosanct, as a thing consecrated and therefore not to be desecrated by profane hands, he is either uncivilized or only semi-civilized, or else he is lapsing into barbarism.

The advantages in favor of substituting law for brute force in dealing with labor disputes are so obvious that they can be briefly stated.

The main argument, the sole argument, in fact, on which the proposition rests, is that law is to do what violence cannot do, that reason is to take the place of passion, that justice is to rob anarchy of its terrors, that equity is to banish chicanery. The sacred duty of the law, the agent of society and civilization, is to guard the weak from the oppression of the strong, to protect the ignorant from their own nescience. In a labor dispute sometimes it is the men who are weaker, at other times it is the masters. Always the innocent are the greatest sufferers. I can see no reason, either in ethics or expediency, why the simple and exact science of the law should not be applied to provide the remedy. We have tried other remedies and they have all proved failures. Yet the simple remedy of compelling obedience to the mandate of society, the remedy for every other injury to the body politic, has been neglected.

I suppose it will be said that the workingmen have almost universally rejected the principle of "compulsory arbitration" and therefore it is hopeless to try to induce them to accept a much more drastic scheme for the settlement of labor disputes. I protest most strongly against the use of that meaningless phrase, "compulsory arbitration," which is not only meaningless, but an utter perversion of words. There is no such thing as "compulsory" arbitration. Arbitration implies mutuality, an agreement to refer a matter in dispute to the judgment of a third party. When A. and B. differ as to a matter in dispute but are desirious of reaching a settlement and agree to abide by the decision of C., there is no necessity for A. B. and C. calling D. E. and F. to ask G. H. and I. to ascertain the merits of the controversy. When A. and B. are determined to reach an amicable agreement there is no opportunity for the outsider to interfere. No one need "compel" them

to arbitrate. "Compulsory arbitration" is as senseless a phrase as the pseudo medical term "heart failure." Both mean nothing.

But when A. and B. dispute a certain matter and A. finds that B. will concede nothing, that he will not submit the claim to arbitration, and being in possession of the disputed property and physically stronger is able to retain its possession, A. has two remedies. He may, if he is foolish, and undisciplined, and passionate, and revengeful, attempt to take what he considers his own by *force majeure,* or he may, if he is sensible, well balanced and calm, invoke the law and rest assured that justice will be done. If A. should attempt to be his own judge and executioner, if he should destroy B.'s property, and not only the property of B. but that of C. D. and E., innocent persons who have no interest in the quarrel, but who may be caused great inconvenience and suffering by it, the law will quickly punish A., and society will applaud the righteousness of the verdict. Multiply A. and B. a thousandfold, as in the case of a great labor dispute, let A. and B. cause untold misery and suffering not only to themselves but to the community at large, and the law, so prompt and efficacious in revenging the wrongs of society when an individual is the wrongdoer or the sufferer, is veritably stricken with blindness and sits with folded hands impotent, incapable, inefficient. What a travesty on law and all that law means!

MARRIAGE AND DIVORCE PROVISIONS IN THE STATE CONSTITUTIONS OF THE UNITED STATES

By Frederick Charles Hicks, Ph. B., LL. B., Librarian U. S. Naval War College, Newport, R. I.

In connection with the agitation both in church and political circles during recent years, and especially in view of the message recently sent to Congress by President Roosevelt, it is pertinent to inquire to what extent the subjects of marriage and divorce have been dealt with in the state constitutions of the United States.

These being among the subjects concerning which the federal constitution is silent, the power of regulating these institutions lies wholly with the states. It might have been expected that subjects so important would have been treated by the states in their most dignified and lasting enacted laws. This, however, is not the case. Their constitutions touch only lightly on these subjects. Generally, when mentioned at all, the burden of regulating marriage and divorce by general laws is delegated to the legislatures. There is, however, in the constitutions themselves, sufficient to give interest to an examination of these provisions.

Marriage being the institution at the basis of our social existence, and the bond from which release is sought in divorce, it first demands our attention. Out of the forty-five state constitutions, only eleven treat the subject of marriage at all. A group of southern states, including Alabama, Florida, Mississippi, North Carolina, South Carolina and Tennessee has practical